

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

JEROME O. HERLIHY  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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August 20, 2009

To Counsel of Record

RE: American Guarantee & Liability Insurance Company v.  
Intel Corporation, et al.  
Civil Action No. 09C-01-170 JOH

Dear Counsel:

The Court has before it Intel Corporation's Motion for a Stay Pending Appeal. Intel is seeking to take an interlocutory appeal of this Court's July 24<sup>th</sup> opinion and order denying its motion to dismiss or stay on grounds of *forum non conveniens*. Plaintiff American Guarantee and Liability Insurance Company opposes this motion.

The Court uses a four-prong test when considering a motion for stay: (1) the Court makes a preliminary assessment of the likelihood of success on the merits of the appeal; (2) the Court must assess whether Intel will suffer irreparable injury if the stay is not granted; (3) the Court assesses whether any other interested party will suffer substantial harm if the stay is granted; and (4) the Court is to determine whether the public interest will be harmed if the stay is granted.<sup>1</sup>

#### Likelihood of Success on Appeal

When considering this test, the Court must be as objective as possible. An essential issue in the opinion for which the interlocutory appeal is being sought is the concurrence of two ongoing actions.

This Court has respectfully and carefully considered and compared the pending case in the Northern District of California with the case here. It was, however, in this

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<sup>1</sup> *Kirpat, Inc. v. Delaware Alcoholic Beverage Control Com'n*, 356, 357 (Del. 1998) (citing *Evans v. Buchanan*, 435 F. Supp. 832, 843-44 (D. Del. 1977)).

Court's view not a "close call" that the case in this Court is far more comprehensive than the somewhat related action in California. All of the necessary parties, including Intel, are in this case before this Court and would be bound by rulings from this Court contrary to the Northern District action.

On that basis, this Court views Intel's likelihood of success in its interlocutory appeal to be slight.

#### Irreparable harm

Intel's only argument in support of the stay is that it will have to answer the complaint. It does not offer any compelling reason for the alleged irreparable harm doing so would cause. It claims that it seeks to avoid duplicate litigation, presumably a reference to the action it initiated in California. This argument rings hollow. As this Court's decision notes when denying its dismissal or stay, Intel has engaged in suing one insurance company at a time rather than doing what American Guarantee did here by bringing in all insurers. Once Intel found out that American Guarantee had filed this action, it had the choice of staying its own action and proceeding here or going ahead with another one of its one-at-a-time actions against a single insurer. Arguably, the harm is self-inflicted.

This Court can see no irreparable harm to Intel and Intel has failed to show this Court any harm. What inconvenience may result from being involved in both cases hardly qualifies as irreparable harm.

#### Substantial Harm to Others

Because Intel sued only American Guarantee in the Northern District action, any resolution of coverage issues in that case has no binding effect on the other insurers who are parties in the action here. There are substantial issues involving other insurers in this case which Intel's federal action does not address. They include that Intel has sued American Guarantee for coverage on one policy in a given year when there are other insurers for prior years who are potentially at risk but from whom Intel has not sought coverage. Considering the huge defense costs incurred so far and to be incurred, this issue, among others, can be addressed here but not in the Northern District action.

In addition, one of Intel's insurers, Markel American Insurance Company, opposed Intel's motion to stay or dismiss because it has been compelled to move to

intervene in several of Intel's one-at-a-time lawsuits. Markel would no longer have to do that if the action here proceeded. It may be prejudiced if this stay were granted.

Two defendant insurers in this case support Intel's motion to stay. Intel had separately sued each and reached some kind of resolution with each. Their support for Intel's motion is not unexpected, but one or both may have exhaustion issues to confront here which, again, would not be resolved in the Northern District action.

#### Public Interest

The issues in this case are not of the normal public interest variety. The one public interest this Court sees is that the public expects the courts not to be overburdened or overused for unnecessary litigation. As this Court views American Guarantee's action in this Court as encompassing all necessary parties, the public interest is met.

#### Conclusion

For the reasons stated herein, Intel Corporation's Motion for a Stay Pending Appeal is **DENIED**.

Sincerely,

/s/ Jerome O. Herlihy  
Judge Jerome O. Herlihy